



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2022-0295; FRL-10162-04-R5]

Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Michigan Air Pollution Control Rules Part 1 Definitions, and Part 2 Air Use Approval for inclusion in the Michigan State Implementation Plan (SIP). Additionally, EPA is removing rules from the SIP that are part of Michigan's title V Renewable Operating Permit program, and rules that have been moved to other sections of the Michigan Administrative Code and approved into the Michigan SIP.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2022-0295. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Constantine Blathras at (312) 886-0671 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, Blathras.constantine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background

On September 27, 2022, EPA proposed approval via a direct final rulemaking (87 FR 58471) of the Michigan SIP revisions submitted on March 8, 2022. During the public comment period, EPA received an adverse comment on the Michigan rule revisions to R 336.1285 "Permit to install exemptions; miscellaneous" and R 336.1291, "Permit to install exemptions; emission units with "de minimis" emissions", which included two new exemptions from the permitting for small sources. On November 14, 2022 (87 FR 68634), EPA withdrew the direct final rule. EPA is approving the following revisions to the Michigan rule revision which did not receive adverse comment. We do not consider the comments

received to be germane or relevant to EPA's proposal to approve Michigan's Part 1 and Part 2 rules as described below, and therefore not adverse to this action. EPA will respond to the comments received on R 336.1285 and R 336.1291 and take further action on that portion of the Michigan SIP revision at a later date.

EPA is approving revisions to Michigan's Part 1. Definitions, and Part 2. Air Use Approval for inclusion in the Michigan SIP. The following Michigan Air Pollution Control Rules are being added or revised: R 336.1101(q), R 336.1103(aa), R 336.1201a, R 336.1202-1203, R 336.1206-1207, R 336.1209, R 336.1214a, R 336.1219(1), R 336.1240-1241, R 336.1278.

The Part 1 definition revisions include new or revised definitions for the following, R 336.1101(q) "Aqueous based parts washer", and R 336.1103(aa) "cold cleaner".

The Part 2 modifications consist of wording changes made to help clarify the air use approval rules, and to update references and terminology. EPA is not approving at this time the two new exemptions from the permitting program for small sources found in R 336.1285 and R 336.1291. EPA will address the comments received on rules R 336.1285 and R 336.1291 at a later date.

EPA is removing the Michigan Air Pollution Control Rules R 336.1212 "Administratively complete applications; insignificant activities; streamlining applicable requirements; emissions reporting and fee calculations", R 336.1216 "Modifications to

renewable operating permits", R 336.1219(2) "Amendments for change of ownership or operational control", R 336.1220 (rescinded), and R 336.1299 (rescinded) from the Michigan SIP.

The rescinded rules have been moved to other sections in the Michigan Administrative Code where they have already been approved into the Michigan SIP and rescinded from the original Part 2 location. This action completes the transition process for these rescinded rules.

The other Part 2 rules removed from the Michigan SIP by this action do not address the requirements related to attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) under section 110 of the Clean Air Act (CAA). EPA has determined that these rules were erroneously incorporated into the SIP. These rules instead address the requirements under title V of the CAA for operating permit programs. EPA fully approved Michigan's title V Renewable Operating Permit Program on November 10, 2003 (68 FR 63735), to implement its program. Since these rules do not address the requirements related to attainment and maintenance of the NAAQS under Section 110 of the CAA and have been approved as part of the title V program approval, EPA will remove them from this section of the Michigan SIP.

EPA proposed to rescind rule R 336.1220 in a February 6, 2013 (78 FR 8485), action (in addition to approval of revisions to Michigan rules in Parts 1 and 19). EPA did not receive any comments on that proposal and published a final action on

December 16, 2013 (78 FR 76064).

As part of the SIP revision request, Michigan submitted a 110(1) demonstration for each of the proposed revisions to the SIP. Section 110(1) of the CAA governs the submittal of SIP revisions as part of Attachment E of its submittal. It states that each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning the attainment and reasonable further progress (as defined by 7501 of the title), or any other applicable requirement of the chapter. The 110(1) demonstration in the SIP revision request adequately addresses this requirement for each rule revision being approved in this action, and the revisions should cause minimal to no impact on the emissions of any source, will have no effect on Michigan's NAAQS attainment status, or any backsliding on achieved improvements. The revision for the removed and rescinded rules pertain to the Michigan title V renewable operating permit program which has already been approved.

II. What Action is EPA Taking?

EPA is approving revisions to Michigan's Part 1 and Part 2 regulations. Specifically, EPA is approving revisions to Michigan Air Pollution Control Rules R 336.1101, R 336.1103, R 336.1201a, R 336.1202, R 336.1203, R 336.1206, R 336.1207, R 336.1209, R 336.1214a, R 336.1219, R 336.1240, R 336.1241, R

336.1278, effective December 20, 2016. EPA is also removing Michigan Air Pollution Control Rules R336.1212, R 336.1216, and R 336.1299 from the SIP.

III. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in Section I of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

Also in this document, as described in Section I of this preamble and the proposed amendments to 40 CFR part 52 set forth below, EPA is proposing to remove provisions of the EPA-Approved Michigan Regulations from the Michigan SIP, which is incorporated by reference in accordance with the requirements of

¹ 62 FR 27968 (May 22, 1997).

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial

review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 17, 2023.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (c) is amended:

a. Under “Part 1. General Provisions” by revising the entries for R 336.1101 and R 336.1103; and

b. Under “Part 2. Air Use Approval” by:

i. Revising the entries for R 336.1201a, R 336.1202, R 336.1203, R 336.1206, R 336.1207, and R 336.1209;

ii. Removing the entry for R 336.1212;

iii. Adding the entry for R 336.1214a in numerical order;

iv. Removing the entry for R 336.1216;

v. Revising the entries for R 336.1219, R 336.1240, R 336.1241, and R 336.1278; and

vi. Removing the entry for R 336.1299.

The revisions and additions read as follows:

§ 52.1170 Identification of plan.

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(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
* * * * *				
Part 1. General Provisions				
R 336.1101	Definitions; A	12/20/2016	[INSERT DATE OF	All except for

			PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	(a) Act and (h) Air pollution.
* * * * *				
R 336.1103	Definitions; C	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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Part 2. Air Use Approval				
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R 336.1201a	General permits to install	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1202	Waivers of approval	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1203	Information required	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
* * * * *				
R 336.1206	Processing of applications for permits to install	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1207	Denial of permits to install	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1209	Use of old permits to limit potential to emit	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1214a	Consolidation of permits to install within renewable operating permit	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1219	Amendments for change of ownership or operational control	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1240	Required air quality	12/20/2016	[INSERT DATE OF	

	models		PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1241	Air quality modeling demonstration requirements	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1278	Exclusion from exemption	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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